

APPEAL NO. 001618

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 19, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. The appellant (carrier) requests our review of this determination, asserting that the hearing officer's determination that the claimant made a good faith effort to obtain employment commensurate with her ability to work is against the great weight of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Reversed and a new decision rendered.

Not appealed are findings that on _____, the date of the claimant's compensable injury which resulted in an impairment rating of 15% or greater, she worked as a housekeeper for (employer) and that the qualifying period for the 12th quarter began on October 28, 1999, and ended on December 28, 1999.

The claimant, who said she had worked as a housekeeper for over 25 years and had been employed by the employer for housekeeping duties for approximately 10 years when she sustained her compensable injury on _____, is 49 years of age and a high school graduate. She stated that her compensable injury was to her leg and shoulder; that she had no surgery for her injured body parts; that she is always in pain from her injuries; and that the pain increases when she attempts to do very much. She did not introduce any medical records and her sole documentary exhibit was her Application for Supplemental Income Benefits (TWCC-52) for the 12th quarter. The claimant further testified that her treating doctor, Dr. H, has only released her for light duty and that he tried to limit her to two hours of work per day but that she talked him into allowing her to attempt to work for four hours per day, explaining that it would not be worth a potential employer's time to complete the paperwork for a job consisting of just two hours per day. The only medical record in evidence is the May 25, 2000, office note of Dr. H which states that he met with Ms. B, the carrier's field case manager, to discuss the results of a recent functional capacity evaluation (FCE); that the FCE indicated the claimant was "capable of moderate work activities"; that the claimant indicated she had markedly worsening pain after her FCE; and that on that basis, he feels that the claimant "certainly is able to work, but would continue to recommend that the most likely success would be with a sedentary job, rather than 'moderate' job activities suggested by her FCE."

The claimant further testified that during the qualifying period, she obtained job leads from the newspapers, the green sheets, and from Ms. B. She said that she made more job search contacts than the 18 written on her TWCC-52 but understood from the instructions that she was only to document one job search per week on that form. She also stated that she made follow-up telephone calls to the employers she contacted but

was unsuccessful in obtaining any employment and that she had no earnings during the qualifying period. The claimant surmised that her honest responses to questions on applications about the circumstances of leaving her last job had an adverse affect. She said that Ms. B suggested she respond to such questions with the statement, "To be discussed," but she felt that doing so would be dishonest. The claimant also indicated that she was not registered with the Texas Workforce Commission and that she went to the Texas Rehabilitation Commission with Ms. B but was not provided with any assistance. Concerning two job contacts for a driving position, the claimant indicated that her driver's license was not current but that she intended to renew it if she got a call back on one of those applications.

The claimant's sole exhibit is her TWCC-52. According to this exhibit, the claimant made a total of 18 job contacts from October 6 through December 19, 1999. The hearing officer's Finding of Fact No. 3 states that the 12th quarter is from January 11, 2000, through April 10, 2000, and that the qualifying period for that quarter is the 13-week period ending 14 days before January 11, 2000, "or from October 28 [sic], 1999 through December 28, 1999." The hearing officer's October 28 start date for the qualifying period is clearly erroneous since 90 days back from the last day of the qualifying period is September 30, 1999. Accordingly, we reform that portion of the finding. However, although the claimant's first job search contact was on October 6, 1999, which is within the seven-day period after September 30, 1999, her last job search contact during the qualifying period was on December 19, 2000.

In his decision, the hearing officer sets out *in toto* the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)-(e) (Rule 130.102(d)-(e)) concerning the required "good faith effort" and required job search efforts and their evaluation. Rule 130.102(e) provides, in part, that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. [Emphasis supplied.]"

In Finding of Fact No. 5, which has been specifically challenged by the carrier, the hearing officer states, in part, that "[d]uring the qualifying period for the twelfth quarter Claimant looked for work each week and documented contacts with eighteen potential employers, . . ." This portion of the finding is clearly against the great weight of the evidence (see In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)) in that the claimant's TWCC-52 reflects that her last job search contact during the qualifying period was on December 19, 1999, and, thus, that she made no contacts in the last two seven-day periods of the qualifying period.

We reverse the decision and order of the hearing officer and render a new decision that the claimant is not entitled to SIBs for the 12th quarter.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge